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POM WONDERFUL LLC

7  
8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

10 POM WONDERFUL LLC, a Delaware  
11 limited liability company,

12 Plaintiff,

13 vs.

14 AMERICAN DAIRY QUEEN  
CORPORATION, a Delaware  
15 corporation; ORANGE JULIUS OF  
AMERICA, a Delaware corporation,  
16 and DOES 1 through 10, inclusive,

17 Defendants.

Case No.

CV 13-7555 MWF-JC

**COMPLAINT FOR:  
FEDERAL TRADEMARK  
INFRINGEMENT; VIOLATION OF  
THE LANHAM ACT § 43(A);  
UNFAIR COMPETITION UNDER  
CALIFORNIA BUSINESS &  
PROFESSIONS CODE § 17200 ET  
SEQ.; CALIFORNIA COMMON  
LAW UNFAIR COMPETITION.**

**DEMAND FOR TRIAL BY JURY**

1 Plaintiff POM Wonderful LLC hereby alleges as follows:

2 **PARTIES**

3 1. Plaintiff POM Wonderful LLC (“POM”) is a Delaware limited liability  
4 company with its principal place of business located at 11444 West Olympic  
5 Boulevard in Los Angeles, California 90064. POM produces, markets, sells and  
6 distributes pomegranate and pomegranate based products worldwide in connection  
7 with its highly distinctive POM® Brand including, but not limited to, fresh fruit,  
8 fresh and freeze dried pomegranate arils (seeds), juices, pomegranate juice  
9 concentrates, teas, and dietary supplements.

10 2. POM is informed and believes that Defendant American Dairy Queen  
11 Corporation is a Delaware corporation with its principal place of business at 7505  
12 Metro Boulevard, Suite 500, Minneapolis, Minnesota 55439-0286. POM is  
13 informed and believes that American Dairy Queen Corporation is involved in the  
14 manufacture and sale of BERRY-POM, a fruit-based smoothie beverage.

15 3. POM is informed and believes that Orange Julius of America is a  
16 Delaware corporation with its principal place of business at 7505 Metro Boulevard,  
17 Suite 500, Minneapolis, Minnesota 55439-0286. POM is informed and believes that  
18 Orange Julius of America is involved in the manufacture and sale of BERRY-POM,  
19 a fruit-based smoothie beverage. American Dairy Queen Corporation and Orange  
20 Julius of America will collectively be referred to as “DQ”.

21 4. POM is not aware of the true names and capacities of the Defendants  
22 identified herein as Does 1 through 10, inclusive, and therefore fictitiously names  
23 said Defendants. POM will amend this Complaint to allege the true names and  
24 capacities of these fictitiously named Defendants when their identities are  
25 ascertained.

26 5. POM is informed and believes, and based thereon alleges, that  
27 Defendants DQ and each of the fictitiously named Doe Defendants (collectively,  
28 “Defendants”) were in some manner responsible for the acts alleged herein and the

1 harm, losses and damages suffered by POM as alleged hereinafter. POM is also  
2 informed and believes, and based thereon alleges, that while participating in such  
3 acts, each Defendant was the agent, principal, and/or alter ego of the other  
4 Defendants, and was acting in the course and scope of such agency and/or acted  
5 with the permission, consent, authorization or ratification of the other Defendants.

6 6. As described further below, POM is informed and believes, and based  
7 thereon alleges, that Defendants conduct business and distribute their products in  
8 California, within this Court's jurisdiction in Southern California and in the greater  
9 Los Angeles area.

#### 10 **JURISDICTION AND VENUE**

11 7. This action arises, in part, under the Lanham Act, as amended, 15  
12 U.S.C. §§ 1114 and 1125, California Business and Professions Code § 17200 et  
13 seq., and California common law. This Court has subject matter jurisdiction over  
14 this action pursuant to 15 U.S.C. § 1121 (trademark infringement claims under the  
15 Lanham Act); 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1338 (original  
16 jurisdiction of trademark claims and unfair competition claims related to same) and  
17 28 U.S.C. § 1367 (supplemental jurisdiction).

18 8. POM is informed and believes, and based thereon alleges, that venue is  
19 proper in this District pursuant to 28 U.S.C. §§ 1391(b) and 1391 (c) because a  
20 substantial part of the events giving rise to the claims occurred in this District.  
21 Additionally, POM is informed and believes, and based thereon alleges, that the  
22 Court has personal jurisdiction over Defendants because Defendants conduct their  
23 ordinary business activities in this District, have focused a portion of their unlawful  
24 conduct in Los Angeles County within this District, have distributed, and sought to  
25 distribute, infringing products in this District, and generally engage in business in  
26 this District and the greater Los Angeles area.

27 ///

28 ///

**FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

**I. THE POM® BRAND**

9. POM began producing, selling and marketing its pomegranate products in 2001.

10. Since 2001, POM has marketed its products in interstate commerce in connection with a family of highly distinctive trademarks which is comprised of, or includes, the term POM (collectively, the “POM® Brand”).

11. The POM® Brand has been used in connection with fresh fruit since 2001, with beverages since 2002, and with concentrated juice extract and related products since 2009. Attached as Exhibit A are examples of the products POM has sold in connection with its POM® Brand.

12. POM has invested millions of dollars in the creation, development, production, marketing and sales of the POM® Brand and its products. The POM® Brand of juice has become the bestselling brand of pomegranate juice in the United States, having sold over 150 million bottles since 2002.

13. The POM® Brand is a unique food and beverages brand whose name is associated with integrity, quality, purity of taste and naturalness of its products.

**II. THE POM® BRAND INTELLECTUAL PROPERTY**

14. POM owns numerous trademark registrations and pending applications in the United States and around the world for the trademarks it uses in connection with the marketing, distribution and sale of its POM® Brand products in interstate commerce. The POM® Brand trademarks are used in connection with various goods including, but not limited to, fresh pomegranate fruit, fresh and freeze-dried arils (pomegranate seeds), pomegranate juice as well as products which contain fruit juice or fruit juice extracts such as teas and dietary supplements.

15. POM has numerous trademarks registered with the United States Patent and Trademark Office. The POM registered trademarks include, but are not limited to: POM (Reg. Nos. 2637053); POM & Design (Reg. No. 3047447); POM

1 WONDERFUL (Reg. Nos. 2640835 and 3687491); POM WONDERFUL &  
 2 Design (Reg. Nos. 2864641, 2780314 and 3687492); POM TEA (Reg. No.  
 3 3411595); LIGHT POM TEA (Reg. No. 3391707); LIGHT POM TEA & Design  
 4 (Reg. No. 3411596); POM IN A PILL (Reg. No. 3337435); POM IN A PILL &  
 5 Design (Reg. No. 3332875); POM POWER (Reg. No. 2944481); POMx (Reg. Nos.  
 6 3562516 and 3674405); POMx & Design (Reg. No. 3562517 and 3791124); POMx  
 7 SHOTS (Reg. No. 3667882); POMX SHOTS (Reg. No. 3667882); POWERED BY  
 8 POMx (Reg. No. 3208934); and POMEGRANATE & Design (Reg. No. 3436526)  
 9 (collectively, the “POM Marks”).

10 16. POM’s registrations are valid and subsisting, and POM owns all right,  
 11 title and interest to the POM Marks. Registration Nos. 2637053, 2640835, 2780314,  
 12 2864641 and 3047447 are incontestable pursuant to 15 U.S.C. Section 1065.  
 13 Attached hereto as Exhibit B are printouts of the registration certificates for the  
 14 POM Marks.

15 17. DQ had constructive notice of POM’s rights in its federally registered  
 16 trademarks under 15 U.S.C. Section 1072, which states: “Registration of a mark on  
 17 the principal register provided by this Act or under the Act of March 3, 1981, or the  
 18 Act of February 20, 1905, shall be constructive notice of the registrant’s claim of  
 19 ownership thereof.” POM’s registered, pending, and common law trademarks  
 20 constitute a family of marks.

21 18. DQ also had actual notice of POM’s rights when it received POM’s  
 22 letter to DQ advising it of POM’s rights on April 9, 2013.

23 19. POM has devoted a great deal of time, money and resources to develop  
 24 and market its products in connection with its POM® Brand. Because of this, there  
 25 is substantial goodwill associated with the POM Marks and POM® Brand.

26 20. The POM Marks are used consistently in every product, advertisement,  
 27 and promotion in connection with POM® Brand products. POM, its distributors,  
 28 and its distributors’ customers, both nationally and internationally, have



1 continuously and exclusively used the POM Marks to distinguish themselves as the  
2 source of goods and services in connection therewith.

3 21. The POM Marks were custom designed to be distinctive, innovative  
4 and recognizable to consumers so that the POM Marks would act as a source-  
5 identifier. Because of this, the POM Marks are inherently distinctive. In the  
6 alternative, because of POM's exclusive and extensive use, the POM Marks have  
7 acquired secondary meaning and distinctiveness, becoming extremely well known to  
8 the consuming public as identifying and distinguishing POM exclusively and  
9 uniquely as the source of products to which the POM® Brand is applied.

10 22. The POM Marks are widely recognized as a source-identifier for  
11 POM® Brand products. POM has built and owns an extremely valuable goodwill  
12 which is symbolized by, and associated with its highly distinctive POM® Brand.

13 23. POM products are not sold under the POM® Brand alone. POM not  
14 only sells its BRANDED products to the general consuming public, it also sells  
15 ingredients such as pomegranate extract, pomegranate juice concentrate and arils to  
16 many companies in the food and beverage and dietary supplement industries for  
17 inclusion in a variety of products including beverages. In some instances POM also  
18 licenses the use of one or more of the POM Marks for use in connection with the  
19 sale of products made using POM's high quality ingredients, including to companies  
20 such as Red Mango – a manufacturer and seller of frozen yogurt and smoothies.

### 21 **III. MARKETING AND PROMOTION OF THE POM® BRAND**

22 24. POM pursues direct marketing efforts to grocery, club, gourmet food,  
23 other specialty stores as well as restaurants, and other on-premise locations  
24 throughout the world.

25 25. POM also sponsors many events such as the LA Marathon; Nike  
26 Women's Marathon; DC Triathlon; the NYC Triathlon; Cart for a Cause (benefiting  
27 Meals on Wheels); Best Buddies Challenge (benefiting Best Buddies); GLAAD  
28 Media Awards (benefiting Gay and Lesbian Alliance Against Defamation); and the

1 New York City Wine and Food Festival (benefiting Share Our Strength). Attached  
2 as Exhibit C are photographs which illustrate some of POM's charitable efforts.

3 26. POM has invested in the POM® Brand, spending millions of dollars  
4 worldwide in the marketing, advertising, sales and promotion of the POM® Brand  
5 products.

6 27. In late 2010, POM began its first television advertisement campaign for  
7 the POM® Brand. POM's television commercials have aired not only in the United  
8 States, but also in Canada, France, the United Kingdom and the Netherlands thus  
9 far.

10 28. In the United States, POM's television commercials were featured on  
11 networks such as ABC, NBC and CBS and aired during a variety of shows such as  
12 Grey's Anatomy, Top Chef and 30 Rock.

13 29. POM believes that its success is due to the quality, purity and taste of  
14 its products and to the highly distinctive, innovative and recognizable POM Marks.

15 30. The POM® Brand denotes high-quality pomegranate-based products  
16 and is a source-identifier of those products.

#### 17 **IV. DEFENDANTS' "BERRY-POM" BEVERAGE**

18 31. Notwithstanding POM's rights in the POM Marks, and with  
19 constructive and actual notice of POM's rights, Defendants are intentionally and  
20 willfully advertising, distributing, and selling a product that infringes the POM  
21 Marks.

22 32. Defendants have sold and continue to sell a drink product called  
23 "BERRY-POM", a fruit-based smoothie beverage. Attached as Exhibit D is a  
24 photocopy of an image of the BERRY-POM beverage.

25 33. Defendants' BERRY-POM beverage infringes the POM Marks by  
26 causing a likelihood of confusion with the POM Marks.

27 34. By copying and using the POM Marks, Defendants are intentionally  
28 trading on the substantial goodwill created by POM. Defendants' use of "POM"

1 with the infringing BERRY-POM beverage creates a likelihood of confusion,  
2 mistake, and deception as to Defendants' affiliation, connection, and/or association  
3 with POM among consumers and the trade.

4 35. POM has never authorized or consented to any such use by Defendants  
5 of the POM Marks.

6 36. On information and belief, after due notice from POM Wonderful of  
7 the infringement, DQ modified its marketing of the infringing Berry-Pom product in  
8 a manner that exacerbates the likelihood of confusion and emphasizes that it is  
9 misappropriating the POM brand. By now including an asterisk after POM® in  
10 "Berry-Pom" that refers to the disclaimer "pomegranate flavored", DQ  
11 acknowledges that POM® is a source indicator, not a flavor designation.

12 Communicating to its consumers that its Berry-Pom product, like POM Wonderful's  
13 products, is pomegranate flavored, does nothing to eliminate confusion as to the  
14 source of the product or its ingredients. Attached as Exhibit D is a true and correct  
15 copy of the advertisement found in the Los Angeles Times of September 8, 2013  
16 and a printout of the DQ website dated June 26, 2013, reflecting this change.

17 37. Defendants' unauthorized actions and blatant use of the POM Marks  
18 constitute trademark infringement, false designation of origin and unfair competition  
19 under the laws of the United States and the State of California.

20 **V. DEFENDANTS' ACTIONS ARE INTENTIONAL AND WILLFUL**

21 38. POM is informed and believes, and based thereon alleges, that  
22 Defendants intentionally designed their BERRY-POM beverage so as to incorporate  
23 the inherently distinctive POM Marks.

24 39. POM is also informed and believes, and based thereon alleges, that  
25 Defendants use the inherently distinctive POM Marks in commerce to intentionally  
26 cause a likelihood of confusion between Defendants' infringing product and POM's  
27 product, or to cause mistake, or to deceive the relevant public that Defendants'  
28 goods or services are authorized, sponsored or approved by or are affiliated with



1 POM.

2 40. POM is further informed and believes, and based thereon alleges, that  
3 by intentionally misappropriating the POM Marks, Defendants are causing customer  
4 confusion in the marketplace.

5 41. POM is informed and believes, and based thereon alleges, that  
6 Defendants have willfully and knowingly infringed the inherently distinctive POM  
7 Marks with knowledge of POM's rights and in an intentional attempt to target  
8 consumers who are familiar with the POM® Brand by creating the impression of an  
9 association between Defendants and POM or an endorsement by POM of  
10 Defendants' goods.

11 42. The natural, probable and foreseeable result of the intentional, willful  
12 and wrongful conduct of Defendants has been to deprive POM of business and  
13 goodwill, and to injure POM's goodwill, reputation and relationships with existing  
14 and prospective customers by infringing the POM Marks, causing customers to  
15 associate the POM® Brand with the BERRY-POM beverage.

16 43. POM is further informed and believes, and based thereon alleges, that it  
17 has lost or will lose revenues from the sale of the inherently distinctive POM®  
18 products and potential revenue from licensing and co-branding opportunities and  
19 has sustained and will sustain damages as a result of Defendants' wrongful conduct  
20 in selling, marketing and distributing the infringing BERRY-POM beverage.

21 44. POM is further informed and believes, and based thereon alleges, that  
22 Defendants have been unjustly enriched by their sale and marketing of the infringing  
23 BERRY-POM beverage.

24 45. Defendants' conduct is the result of willful and wanton disregard of  
25 POM's established and superior rights. Defendants adopted and used, and continue  
26 to use, the POM Marks without authorization and with full knowledge of POM's  
27 superior rights and despite having been put on notice. POM has suffered, and will  
28 continue to suffer, irreparable injury as a result of Defendants' unlawful actions and

1 has no adequate remedy at law. POM is therefore entitled to injunctive relief.

2 **FIRST CLAIM FOR RELIEF**

3 **(Trademark Infringement Pursuant to 15 U.S.C. § 1114)**

4 46. POM incorporates by reference Paragraphs 1 through 45 above as  
5 though fully set forth herein.

6 47. Defendants' BERRY-POM beverage infringes the POM Marks because  
7 their use of the POM Marks as part of their product's name, is likely to cause  
8 confusion, mistake, and deception with respect to the POM Marks.

9 48. Defendants' imitation, copying, and unauthorized use in commerce of  
10 POM's federally registered trademarks is likely to cause confusion, mistake, or to  
11 deceive the consuming public and trade by creating the erroneous impression that  
12 Defendants' products have been manufactured, approved, sponsored, endorsed, or  
13 guaranteed by, or are in some way affiliated with POM.

14 49. The imitation, copying, and unauthorized use of the POM Marks causes  
15 irreparable injury to POM, including injury to its business reputation and the  
16 goodwill associated with the POM Marks.

17 50. By reason of the foregoing, Defendants have infringed POM's  
18 trademarks and have violated, and are continuing to violate, 15 U.S.C. Section 1114.

19 51. POM has no adequate remedy at law for these injuries. Moreover,  
20 unless Defendants are restrained by this Court from continuing this imitation,  
21 copying and unauthorized use of the POM Marks, these injuries will continue to  
22 occur. POM is entitled to an injunction restraining Defendants, their officers,  
23 agents, distributors and employees, and all persons acting in concert with them,  
24 from engaging in such further acts in violation of 15 U.S.C. Section 1116.

25 52. By reason of Defendants' willful acts of trademark infringement, POM  
26 is entitled to damages it has sustained and will sustain, and to have those damages  
27 trebled pursuant to 15 U.S.C. Section 1117.

28 53. This is an exceptional case making POM eligible for an award of

1 attorneys' fees under 15 U.S.C. Section 1117.

2 54. POM is further entitled to recover from Defendants any gains, profits  
3 and advantages unfairly obtained by Defendants as a result of their acts of  
4 infringement alleged herein. At present, the amount of any gains, profits and  
5 advantages cannot be fully ascertained by POM. POM is unable to ascertain the full  
6 extent of the monetary damages suffered by reason of Defendants' acts at this time.

7 **SECOND CLAIM FOR RELIEF**

8 **(Trademark Infringement and False Designation of Origin Pursuant to 15**  
9 **U.S.C. § 1125(a))**

10 55. POM incorporates by reference Paragraphs 1 through 54 above as  
11 though fully set forth herein.

12 56. Defendants' infringing BERRY-POM beverage infringes the POM  
13 Marks, and Defendants are falsely designating the origin of their brand because the  
14 use of the POM Marks as part of their product's name is likely to cause confusion,  
15 mistake, and deception with respect to the POM Marks.

16 57. Defendants' use of POM as part of its product name has confused and  
17 is likely to continue to cause confusion or to cause mistake, or to deceive the  
18 consuming public into believing that Defendants' goods or services are authorized,  
19 sponsored or approved by or are affiliated with POM.

20 58. These acts constitute trademark infringement of the POM Marks and  
21 false designation of origin in violation of 15 U.S.C. Section 1125(a), entitling POM  
22 to relief.

23 59. By reason of Defendants' acts, POM is, and will continue to be,  
24 irreparably harmed if Defendants' conduct is not enjoined. POM's remedy at law is  
25 not adequate to compensate it for the injuries inflicted, and POM is therefore  
26 entitled to injunctive relief pursuant to 15 U.S.C. Section 1116.

27 60. The above-described acts of Defendants have irreparably harmed and,  
28 if not enjoined, will continue to irreparably harm the general public, which has an

1 interest in being free from confusion, mistake and deception.

2 61. Defendants have unfairly profited from the actions alleged and POM is  
3 therefore entitled to recover from Defendants the damages sustained as a result of  
4 Defendants' acts in violation of 15 U.S.C. Section 1125(a). At present, POM is  
5 unable to ascertain the full extent of the monetary damages suffered by reason of  
6 Defendants' acts.

7 62. Further, because of the willful nature of Defendants' acts, POM is  
8 entitled to damages and to have those damages trebled pursuant to 15 U.S.C. Section  
9 1117.

10 63. This is an exceptional case making POM eligible for an award of  
11 attorneys' fees pursuant to 15 U.S.C. Section 1117.

### 12 **THIRD CLAIM FOR RELIEF**

#### 13 **(Unfair Competition and Unfair Business Practices Pursuant to Cal. Bus. & 14 Prof. Code §§ 17200, 17500 et seq.)**

15 64. POM incorporates by reference Paragraphs 1 through 63 above as  
16 though fully set forth herein.

17 65. Defendants' willful, knowing and unauthorized promotion,  
18 advertisement, sale and offering for sale of infringing goods, causing confusion as to  
19 the source of the goods and causing harm to POM's goodwill, consist of untrue and  
20 misleading statements and constitute an unlawful appropriation of POM's exclusive  
21 rights in its POM Marks as outlined herein.

22 66. Defendants have unlawfully appropriated POM's exclusive rights in its  
23 POM Marks, infringing on POM's rights because, like POM does on its products,  
24 Defendants use of the term POM as part of their product name infringes the POM  
25 Marks.

26 67. By selling and offering for sale infringing goods and services,  
27 Defendants are in violation of POM's proprietary rights. Their conduct thereby  
28 constitutes unlawful, unfair, deceptive and/or fraudulent trade practices and unfair

1 competition in violation of California Business & Professions Code Sections 17200,  
 2 17500 et seq. The predicate acts comprising Defendants' unlawful, unfair,  
 3 deceptive and/or fraudulent trade practices or acts include, but are not limited to, the  
 4 violations of law more fully set forth herein, specifically violations of 15 U.S.C. §§  
 5 1114 and 1125 has caused POM to lose money by means of the unlawful conduct.

6 68. As a direct and proximate result of Defendants' wrongful conduct,  
 7 POM has suffered injury in fact, which losses include damage to POM's goodwill  
 8 with its existing, former and potential customers and actual confusion between  
 9 Defendants' infringing products and POM's® Brand of products.

10 69. These wrongful acts have proximately caused and will continue to  
 11 cause POM substantial injury, including loss of customers, loss of goodwill, and  
 12 confusion of existing and potential customers of POM's products. The harm these  
 13 wrongful acts will cause to POM is both imminent and irreparable, and the amount  
 14 of damage sustained by POM will be impossible to ascertain if these acts continue.  
 15 As such, POM has no adequate remedy at law.

16 70. Pursuant to California Business & Professions Code Section 17203,  
 17 Defendants are required to disgorge and restore to POM all profits and property  
 18 acquired by means of Defendants' unfair competition with POM.

19 71. Pursuant to California Business & Professions Code Section 17203,  
 20 POM is also entitled to a preliminary and permanent injunction restraining  
 21 Defendants, their respective officers, agents, employees, distributors and all persons  
 22 acting in concert with them, from engaging in further such unlawful conduct.

#### 23 **FOURTH CLAIM FOR RELIEF**

##### 24 **(Violation of California Common Law Unfair Competition)**

25 72. POM incorporates Paragraphs 1 through 71 above as though set forth  
 26 fully herein.

27 73. As set forth above, Defendants' willful, knowing and unauthorized  
 28 promotion, advertisement, sale and offering for sale of infringing goods, causing



1 confusion as to the source of the goods and causing harm to POM's goodwill,  
2 consist of untrue and misleading statements and constitute an unlawful appropriation  
3 of POM's exclusive rights in its POM Marks and constitutes unfair competition  
4 under California common law.

5 74. Defendants have unlawfully appropriated POM's exclusive rights in its  
6 POM Marks, infringing on POM's rights.

7 75. By reason of Defendants' conduct, POM has sustained and will  
8 continue to sustain substantial injury, loss, and damage, as set forth above.

9 76. Further irreparable harm and injury to POM is imminent as a result of  
10 Defendants' conduct, and POM is without an adequate remedy at law.

11 77. POM is therefore entitled to an injunction restraining Defendants, their  
12 agents, employees, representatives, distributors and all persons acting in concert  
13 with them, from engaging in further acts of unfair competition.

14 78. POM is further entitled to recover from Defendants the damages  
15 sustained by POM as a result of Defendants' acts of unfair competition. POM is at  
16 present unable to ascertain the full extent of the monetary damages it has suffered by  
17 reason of Defendants' acts of unfair competition.

18 79. Finally, POM is informed and believes, and based thereon alleges, that  
19 Defendants' conduct has been intentional and willful and in conscious disregard of  
20 POM's rights and, therefore, POM is entitled to exemplary or punitive damages  
21 under California Civil Code Section 3294 in an amount appropriate to punish  
22 Defendants and to make an example of Defendants to the community at large.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, POM prays for judgment against Defendants as follows:

25 1. That the Court enter judgment against each Defendant that:

26 a. Defendants infringed the rights of POM in their federally  
27 registered trademarks in violation of 15 U.S.C. Section 1114;

28 b. Defendants infringed POM's rights in the POM Marks in

1 violation of 15 U.S.C. Section 1125;

2 c. Defendants engaged in unfair competition and deceptive acts and  
3 practices in violation of California Business & Professions Code Sections 17200,  
4 17500, et seq.;

5 d. Defendants engaged in unfair competition and deceptive acts and  
6 practices in violation of California common law;

7 e. That the Court enter judgment against each Defendant that the  
8 above acts, 1(a)-(e), were willful and intentional, making this an exceptional case;

9 2. That the Court issue a preliminary and permanent injunction enjoining  
10 and restraining Defendants and their agents, employees, successors, assigns and all  
11 other persons acting in concert or in conspiracy with or affiliated with Defendants  
12 from:

13 a. Engaging in any infringing activity including advertising,  
14 promoting, marketing, franchising, distributing, selling, and offering for sale any  
15 goods or services in connection with the infringing product identified herein or any  
16 product or mark similar to the POM Marks in any media, whether in person, in print  
17 or by electronic or digital means including but not limited to newspapers,  
18 magazines, bus shelters, billboards as well as via the Internet, including but not  
19 limited to, company websites, promotional websites, social media websites,  
20 YouTube or other video-related websites, food reviewing websites, blogs, email,  
21 SMS and the like; and

22 b. Requiring Defendants to deliver up to POM for destruction any  
23 and all packaging, advertising and promotional materials in Defendants' possession,  
24 custody or control which contain the infringing products, marks, and/or designs, and  
25 any and all infringing products in their possession, custody or control which include  
26 the POM Marks.

27 3. That the Court issue an Order at the conclusion of the present matter  
28 that all infringing products be recalled, seized, impounded and destroyed.

1           4.     That POM be awarded damages for Defendants' trademark  
2 infringement, and for unfair competition under California common law.

3           5.     That POM be awarded all profits and restitution resulting from  
4 Defendants' infringement of POM's rights and by means of Defendants' unfair  
5 competition with POM.

6           6.     That Defendants be ordered to account for and disgorge to POM all  
7 amounts by which Defendants have been unjustly enriched by reason of the  
8 unlawful acts complained of.

9           7.     That damages resulting from Defendants' infringement under the  
10 Lanham Act be trebled due to Defendants' willfulness in accordance with the  
11 provisions of 15 U.S.C. Section 1117.

12          8.     That POM be awarded exemplary or punitive damages in an amount  
13 appropriate to punish Defendants and to make an example of the Defendants to the  
14 community.

15          9.     That, at POM's election, POM be awarded an amount sufficient to  
16 reimburse POM for the costs of corrective advertising.

17          10.    For pre-judgment interest on all infringement and other appropriate  
18 damages.

19          11.    That the Court award POM its reasonable attorneys' fees pursuant to 15  
20 U.S.C. § 1117, 17 U.S.C. Section 505, California law, and any other applicable  
21 provision of law.

22          12.    That the Court award POM its costs of suit incurred herein.

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13. For such other or further relief as the Court may deem just and proper.

DATED: October 11, 2013

ROLL LAW GROUP PC

By:

  
Michael M. Vasseghi  
Attorneys for POMWONDERFUL LLC

**DEMAND FOR JURY TRIAL**

Plaintiff POM Wonderful LLC hereby demands a jury trial in connection with this action.

DATED: October 11, 2013

ROLL LAW GROUP PC

By:

  
Michael M. Vasseghi  
Attorneys for POMWONDERFUL LLC

# **Exhibit A**







Pg. 19











# **Exhibit B**

**Int. Cl.: 32**

**Prior U.S. Cls.: 45, 46, and 48**

**United States Patent and Trademark Office**

**Reg. No. 2,637,053**

**Registered Oct. 15, 2002**

**TRADEMARK  
PRINCIPAL REGISTER**

**POM**

POM WONDERFUL LLC (DELAWARE LIMITED  
LIABILITY COMPANY)

11444 W. OLYMPIC BLVD.

LOS ANGELES, CA 90064 BY CHANGE OF NAME  
PARAMOUNT JUICE COMPANY LLC (DELA-  
WARE LIMITED LIABILITY COMPANY) LOS  
ANGELES, CA 90064

FOR: FRUIT JUICES, IN CLASS 32 (U.S. CLS. 45, 46  
AND 48).

FIRST USE 4-11-2002; IN COMMERCE 4-11-2002.

SN 76-245,687, FILED 4-24-2001.

CHRISTOPHER LAW, EXAMINING ATTORNEY

**Int. Cls.: 31 and 32**

**Prior U.S. Cls.: 1, 45, 46 and 48**

**United States Patent and Trademark Office**

**Reg. No. 3,047,447**

**Registered Jan. 24, 2006**

**TRADEMARK  
PRINCIPAL REGISTER**



POM WONDERFUL LLC (DELAWARE LTD LIAB  
CO)

11444 WEST OLYMPIC BOULEVARD

10TH FLOOR

LOS ANGELES, CA 90064

FOR: FRESH FRUITS, IN CLASS 31 (U.S. CLS. 1  
AND 46).

FIRST USE 10-15-2001; IN COMMERCE 10-15-2001.

FOR: FRUIT JUICES AND FRUIT JUICE CON-  
CENTRATES, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

FIRST USE 9-16-2002; IN COMMERCE 1-13-2003.

THE MARK CONTAINS THE WORD POM WITH  
A HEART DESIGN IN PLACE OF THE LETTER "O".

SER. NO. 76-553,991, FILED 10-6-2003.

KATHRYN COWARD, EXAMINING ATTORNEY

**Int. Cl.: 31**

**Prior U.S. Cls.: 1 and 46**

**United States Patent and Trademark Office**

**Reg. No. 2,640,835**

**Registered Oct. 22, 2002**

**TRADEMARK  
PRINCIPAL REGISTER**

**POM WONDERFUL**

**POM WONDERFUL LLC (DELAWARE LIMITED  
LIABILITY COMPANY)**

**11444 W. OLYMPIC BLVD.**

**LOS ANGELES, CA 90064 BY CHANGE OF NAME  
PARAMOUNT JUICE COMPANY LLC (DELA-  
WARE LIMITED LIABILITY COMPANY) LOS  
ANGELES, CA 90064**

**FOR: FRESH FRUITS, IN CLASS 31 (U.S. CLS. 1  
AND 46).**

**FIRST USE 4-11-2002; IN COMMERCE 4-11-2002.**

**SN 76-244,362, FILED 4-19-2001.**

**CHRISTOPHER LAW, EXAMINING ATTORNEY**



# United States of America

## United States Patent and Trademark Office

### POM WONDERFUL

**Reg. No. 3,687,491** POMWONDERFUL LLC (DELAWARE LIMITED LIABILITY COMPANY)  
Registered Sep. 22, 2009 11444 W. OLYMPIC BLVD., 10TH FLOOR  
LOS ANGELES, CA 90064

**Int. Cls.: 5, 29, 30, and 32**

**TRADEMARK  
PRINCIPAL REGISTER**

FOR: FOOD, DIETARY AND NUTRITIONAL SUPPLEMENTS, INCLUDING ANTIOXIDANT SUPPLEMENTS AND SUPPLEMENTS DERIVED FROM AND CONTAINING POMEGRANATE EXTRACTS AND PLANT EXTRACTS, INCLUDING POWDERS, LIQUIDS, CAPSULES, AND PILLS; NUTRACEUTICALS FOR USE AS A DIETARY SUPPLEMENT, INCLUDING POWDERS, LIQUIDS, CAPSULES, AND PILLS; ANTI-CANCER PREPARATIONS; PHARMACEUTICAL PRODUCTS AND PREPARATIONS, INCLUDING PREPARATIONS DERIVED FROM AND CONTAINING POMEGRANATE EXTRACTS AND PLANT EXTRACTS, FOR THE TREATMENT OF VIRAL AND INFECTIOUS DISEASES, INCLUDING FOR THE TREATMENT OF CANCER, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 5-0-2007; IN COMMERCE 5-0-2007.

FOR: FROZEN FRUITS, IN CLASS 29 (U.S. CL. 46).

FIRST USE 6-0-2006; IN COMMERCE 6-0-2006.

FOR: TOPPING SYRUP; ICED TEA AND TEA-BASED BEVERAGES WITH FRUIT FLAVORING, IN CLASS 30 (U.S. CL. 46).

FIRST USE 2-1-2006; IN COMMERCE 3-6-2006.

FOR: NON-ALCOHOLIC FRUIT EXTRACTS USED IN THE PREPARATION OF BEVERAGES; PREPARATIONS FOR MAKING FRUIT DRINKS; FRUIT FLAVORED BEVERAGES; NON-ALCOHOLIC BEVERAGES CONTAINING FRUIT JUICES; SMOOTHIES; BOTTLED WATER; NON-ALCOHOLIC BEVERAGES WITH TEA FLAVOR; LOW CALORIE FRUIT FLAVORED BEVERAGES; LOW CALORIE FRUIT JUICE DRINKS; LOW CALORIE TEA FLAVORED BEVERAGES, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

FIRST USE 6-30-2004; IN COMMERCE 6-30-2004.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 2,637,053, 2,960,193, AND OTHERS.

SN 78-628,764, FILED 5-12-2005.

PAUL E. FAHRENKOPF, EXAMINING ATTORNEY



*David J. Kypas*

Director of the United States Patent and Trademark Office

**Int. Cls.: 31 and 32**

**Prior U.S. Cls.: 1, 45, 46 and 48**

**United States Patent and Trademark Office**

**Reg. No. 2,864,641**

**Registered July 20, 2004**

**TRADEMARK  
PRINCIPAL REGISTER**



POM WONDERFUL LLC (DELAWARE LTD LIAB  
CO)  
11444 WEST OLYMPIC BOULEVARD  
10TH FLOOR  
LOS ANGELES, CA 90064

FOR: FRESH FRUITS, IN CLASS 31 (U.S. CLS. 1  
AND 46).

FIRST USE 10-15-2001; IN COMMERCE 10-15-2001.

FOR: FRUIT JUICES AND FRUIT JUICE CON-  
CENTRATES, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

FIRST USE 9-16-2002; IN COMMERCE 1-13-2003.

OWNER OF U.S. REG. NOS. 2,637,053, 2,780,314  
AND OTHERS.

THE MARK CONTAINS THE WORDS POM WON-  
DERFUL, WITH A HEART DESIGN IN PLACE OF  
THE LETTER "O" IN THE WORD "POM".

SER. NO. 76-534,468, FILED 8-4-2003.

BARBARA GAYNOR, EXAMINING ATTORNEY

**Int. Cls.: 31 and 32**

**Prior U.S. Cls.: 1, 45, 46, and 48**

**United States Patent and Trademark Office**

**Reg. No. 2,780,314**

**Registered Nov. 4, 2003**

**TRADEMARK  
PRINCIPAL REGISTER**



POM WONDERFUL LLC (DELAWARE LIMITED  
LIABILITY COMPANY)  
11444 W. OLYMPIC BLVD., 10TH FLOOR  
LOS ANGELES, CA 90064

FOR: FRESH FRUITS, IN CLASS 31 (U.S. CLS. 1  
AND 46).

FIRST USE 10-15-2001; IN COMMERCE 10-15-2001.

FOR: FRUIT JUICES AND FRUIT JUICE CON-  
CENTRATES, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

FIRST USE 10-15-2001; IN COMMERCE 10-15-2001.

THE MARK CONTAINS THE WORD "POM",  
AND THE WORD "WONDERFUL" IN RED, THE  
SAME RED SHADE OF WHICH IS ALSO WITHIN  
THE HEART OF THE "POM".

SN 76-347,919, FILED 12-11-2001.

MARK T. MULLEN, EXAMINING ATTORNEY

# United States of America

United States Patent and Trademark Office

## POM WONDERFUL

**Reg. No. 3,687,492** POMWONDERFUL LLC (DELAWARE LIMITED LIABILITY COMPANY)  
Registered Sep. 22, 2009 11444 W. OLYMPIC BLVD., 10TH FLOOR  
LOS ANGELES, CA 90064

**Int. Cls.: 5, 29, 30, and 32** FOR: FOOD, DIETARY AND NUTRITIONAL SUPPLEMENTS, INCLUDING ANTIOXIDANT SUPPLEMENTS AND SUPPLEMENTS DERIVED FROM AND CONTAINING POMEGRANATE EXTRACTS AND PLANT EXTRACTS, INCLUDING POWDERS, LIQUIDS, CAPSULES, AND PILLS; NUTRACEUTICALS FOR USE AS A DIETARY SUPPLEMENT, INCLUDING POWDERS, LIQUIDS, CAPSULES, AND PILLS; ANTI-CANCER PREPARATIONS; PHARMACEUTICAL PRODUCTS AND PREPARATIONS, INCLUDING PREPARATIONS DERIVED FROM AND CONTAINING POMEGRANATE EXTRACTS AND PLANT EXTRACTS, FOR THE TREATMENT OF VIRAL AND INFECTIOUS DISEASES, INCLUDING FOR THE TREATMENT OF CANCER, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

**TRADEMARK  
PRINCIPAL REGISTER**

FIRST USE 5-0-2007; IN COMMERCE 5-0-2007.

FOR: FROZEN FRUITS, IN CLASS 29 (U.S. CL. 46).

FIRST USE 6-0-2006; IN COMMERCE 6-0-2006.

FOR: TOPPING SYRUP; ICED TEA AND TEA-BASED BEVERAGES WITH FRUIT FLAVORING, IN CLASS 30 (U.S. CL. 46).

FIRST USE 2-1-2006; IN COMMERCE 3-6-2006.

FOR: NON-ALCOHOLIC FRUIT EXTRACTS USED IN THE PREPARATION OF BEVERAGES; PREPARATIONS FOR MAKING FRUIT DRINKS; FRUIT FLAVORED BEVERAGES; NON-ALCOHOLIC BEVERAGES CONTAINING FRUIT JUICES; SMOOTHIES; NON-ALCOHOLIC BEVERAGES WITH TEA FLAVOR; LOW CALORIE FRUIT FLAVORED BEVERAGES; LOW CALORIE FRUIT JUICE DRINKS; LOW CALORIE TEA FLAVORED BEVERAGES, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

FIRST USE 6-30-2004; IN COMMERCE 6-30-2004.

OWNER OF U.S. REG. NOS. 2,637,053, 2,960,193, AND OTHERS.

THE MARK CONSISTS OF THE WORDS "POM WONDERFUL", WITH A HEART DESIGN IN PLACE OF THE LETTER "O" IN THE WORD "POM".



*David J. Kappas*

Director of the United States Patent and Trademark Office

**Reg. No. 3,687,492** SN 78-628,813, FILED 5-12-2005.

PAUL E. FAHRENKOPF, EXAMINING ATTORNEY

**Int. Cls.: 30 and 32**

**Prior U.S. Cls.: 45, 46 and 48**

**United States Patent and Trademark Office**

**Reg. No. 3,411,595**

**Registered Apr. 15, 2008**

**TRADEMARK  
PRINCIPAL REGISTER**

**POM TEA**

POMWONDERFUL LLC (DELAWARE LTD LIAB  
CO)  
11444 W. OLYMPIC BLVD., 10TH FLOOR  
LOS ANGELES, CA 90064

FOR: ICED TEAS AND TEA-BASED BEVERAGES  
WITH POMEGRANATE FLAVORING, IN CLASS 30  
(U.S. CL. 46).

FIRST USE 2-1-2006; IN COMMERCE 3-6-2006.

FOR: NON-ALCOHOLIC FRUIT EXTRACTS  
USED IN THE PREPARATION OF BEVERAGES,  
PREPARATIONS FOR MAKING FRUIT DRINKS,  
FRUIT FLAVORED BEVERAGES, NON-ALCOHOL-  
IC BEVERAGES CONTAINING FRUIT JUICES,  
NON-ALCOHOLIC BEVERAGES WITH TEA FLA-  
VOR, LOW CALORIE FRUIT FLAVORED BEVERA-  
GES, LOW CALORIE TEA FLAVORED  
BEVERAGES, ALL MADE IN WHOLE OR SIGNIFI-

CANT PART OF POMEGRANATE JUICE, IN CLASS  
32 (U.S. CLS. 45, 46 AND 48).

FIRST USE 2-1-2006; IN COMMERCE 3-6-2006.

THE MARK CONSISTS OF STANDARD CHAR-  
ACTERS WITHOUT CLAIM TO ANY PARTICULAR  
FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 2,637,053, 3,047,447  
AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE  
RIGHT TO USE "TEA", APART FROM THE MARK  
AS SHOWN.

SER. NO. 77-249,106, FILED 8-7-2007.

BRIAN CALLAGHAN, EXAMINING ATTORNEY

**Int. Cls.: 30 and 32**

**Prior U.S. Cls.: 45, 46 and 48**

**United States Patent and Trademark Office**

**Reg. No. 3,391,707**

**Registered Mar. 4, 2008**

**TRADEMARK  
PRINCIPAL REGISTER**

**LIGHT POM TEA**

POMWONDERFUL LLC (DELAWARE LTD LIAB  
CO)  
11444 W. OLYMPIC BLVD., 10TH FLOOR  
LOS ANGELES, CA 90064

FOR: ICED TEAS AND TEA-BASED BEVERAGES  
WITH POMEGRANATE FLAVORING, IN CLASS 30  
(U.S. CL. 46).

FIRST USE 6-25-2007; IN COMMERCE 6-25-2007.

FOR: NON-ALCOHOLIC FRUIT EXTRACTS  
USED IN THE PREPARATION OF BEVERAGES,  
PREPARATIONS FOR MAKING FRUIT DRINKS,  
FRUIT FLAVORED BEVERAGES, NON-ALCOHOL-  
IC BEVERAGES CONTAINING FRUIT JUICES,  
NON-ALCOHOLIC BEVERAGES WITH TEA FLA-  
VOR, LOW CALORIE FRUIT FLAVORED BEVERA-  
GES, LOW CALORIE TEA FLAVORED  
BEVERAGES, ALL MADE IN WHOLE OR SIGNIFI-

CANT PART OF POMEGRANATE JUICE, IN CLASS  
32 (U.S. CLS. 45, 46 AND 48).

FIRST USE 6-25-2007; IN COMMERCE 6-25-2007.

THE MARK CONSISTS OF STANDARD CHAR-  
ACTERS WITHOUT CLAIM TO ANY PARTICULAR  
FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 2,637,053, 3,047,447  
AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE  
RIGHT TO USE "LIGHT" OR "TEA", APART FROM  
THE MARK AS SHOWN.

SER. NO. 77-249,295, FILED 8-7-2007.

BRIAN CALLAGHAN, EXAMINING ATTORNEY



**Int. Cls.: 30 and 32**

**Prior U.S. Cls.: 45, 46 and 48**

**United States Patent and Trademark Office**

**Reg. No. 3,411,596**

**Registered Apr. 15, 2008**

**TRADEMARK  
PRINCIPAL REGISTER**



POMWONDERFUL LLC (DELAWARE LTD LIAB  
CO)  
11444 W. OLYMPIC BLVD., 10TH FLOOR  
LOS ANGELES, CA 90064

FOR: ICED TEAS AND TEA-BASED BEVERAGES  
WITH POMEGRANATE FLAVORING, IN CLASS 30  
(U.S. CL. 46).

FIRST USE 6-25-2007; IN COMMERCE 6-25-2007.

FOR: NON-ALCOHOLIC FRUIT EXTRACTS  
USED IN THE PREPARATION OF BEVERAGES,  
PREPARATIONS FOR MAKING FRUIT DRINKS,  
FRUIT FLAVORED BEVERAGES, NON-ALCOHOL-  
IC BEVERAGES CONTAINING FRUIT JUICES,  
NON-ALCOHOLIC BEVERAGES WITH TEA FLA-  
VOR, LOW CALORIE FRUIT FLAVORED BEVERA-

GES, LOW CALORIE TEA FLAVORED  
BEVERAGES, ALL MADE IN WHOLE OR SIGNIFI-  
CANT PART OF POMEGRANATE JUICE, IN CLASS  
32 (U.S. CLS. 45, 46 AND 48).

FIRST USE 6-25-2007; IN COMMERCE 6-25-2007.

OWNER OF U.S. REG. NOS. 2,637,053, 3,047,447  
AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE  
RIGHT TO USE "LIGHT" OR "TEA", APART FROM  
THE MARK AS SHOWN.

SER. NO. 77-249,299, FILED 8-7-2007.

BRIAN CALLAGHAN, EXAMINING ATTORNEY

**Int. Cls.: 1 and 5**

**Prior U.S. Cls.: 1, 5, 6, 10, 18, 26, 44, 46, 51, and 52**

**United States Patent and Trademark Office**

**Reg. No. 3,337,435**

**Registered Nov. 13, 2007**

**TRADEMARK  
PRINCIPAL REGISTER**

**POM IN A PILL**

POMWONDERFUL LLC (DELAWARE LTD LIAB  
CO)  
11444 W. OLYMPIC BLVD., 10TH FLOOR  
LOS ANGELES, CA 90064

FOR: BOTANICAL EXTRACTS, INCLUDING POMEGRANATE EXTRACTS, FOR USE IN THE PREPARATION OF PHARMACEUTICAL PRODUCTS AND PREPARATIONS, IN CLASS 1 (U.S. CLS. 1, 5, 6, 10, 26 AND 46).

FIRST USE 5-7-2007; IN COMMERCE 5-7-2007.

FOR: FOOD, DIETARY AND NUTRITIONAL SUPPLEMENTS, INCLUDING ANTIOXIDANT SUPPLEMENTS AND SUPPLEMENTS DERIVED FROM AND CONTAINING POMEGRANATE EXTRACTS AND PLANT EXTRACTS, INCLUDING POWDERS, LIQUIDS, CAPSULES, AND PILLS; NUTRACEUTICALS FOR USE AS A DIETARY SUPPLEMENT, INCLUDING POWDERS, LIQUIDS, CAPSULES, AND PILLS; NUTRITIONAL ADDITIVES FOR USE IN FOODS, INCLUDING ANTIOXIDANT ADDI-

TIVES AND ADDITIVES DERIVED FROM AND CONTAINING POMEGRANATE EXTRACTS AND PLANT EXTRACTS, INCLUDING POWDERS, LIQUIDS, CAPSULES, AND PILLS; ANTI-CANCER PREPARATIONS; PHARMACEUTICAL PRODUCTS AND PREPARATIONS, INCLUDING PREPARATIONS DERIVED FROM AND CONTAINING POMEGRANATE EXTRACTS AND PLANT EXTRACTS, FOR THE TREATMENT OF VIRAL AND INFECTIOUS DISEASES, INCLUDING FOR THE TREATMENT OF CANCER, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 5-7-2007; IN COMMERCE 5-7-2007.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 78-961,648, FILED 8-28-2006.

JAMES MACFARLANE, EXAMINING ATTORNEY

**Int. Cls.: 1 and 5**

**Prior U.S. Cls.: 1, 5, 6, 10, 18, 26, 44, 46, 51, and 52**

**United States Patent and Trademark Office**

**Reg. No. 3,332,875**

**Registered Nov. 6, 2007**

**TRADEMARK  
PRINCIPAL REGISTER**

**POM IN A PILL**

POMWONDERFUL LLC (DELAWARE LTD LIAB  
CO)  
11444 W. OLYMPIC BLVD., 10TH FLOOR  
LOS ANGELES, CA 90064

FOR: BOTANICAL EXTRACTS, INCLUDING POMEGRANATE EXTRACTS, FOR USE IN THE PREPARATION OF PHARMACEUTICAL PRODUCTS AND PREPARATIONS, IN CLASS 1 (U.S. CLS. 1, 5, 6, 10, 26 AND 46).

FIRST USE 5-7-2007; IN COMMERCE 5-7-2007.

FOR: FOOD, DIETARY AND NUTRITIONAL SUPPLEMENTS, INCLUDING ANTIOXIDANT SUPPLEMENTS AND SUPPLEMENTS DERIVED FROM AND CONTAINING POMEGRANATE EXTRACTS AND PLANT EXTRACTS, INCLUDING POWDERS, LIQUIDS, CAPSULES, AND PILLS; NUTRACEUTICALS FOR USE AS A DIETARY SUPPLEMENT, INCLUDING POWDERS, LIQUIDS, CAPSULES, AND PILLS; NUTRITIONAL ADDITIVES FOR USE IN FOODS, INCLUDING ANTIOXIDANT ADDI-

TIVES AND ADDITIVES DERIVED FROM AND CONTAINING POMEGRANATE EXTRACTS AND PLANT EXTRACTS, INCLUDING POWDERS, LIQUIDS, CAPSULES, AND PILLS; ANTI-CANCER PREPARATIONS; PHARMACEUTICAL PRODUCTS AND PREPARATIONS, INCLUDING PREPARATIONS DERIVED FROM AND CONTAINING POMEGRANATE EXTRACTS AND PLANT EXTRACTS, FOR THE TREATMENT OF VIRAL AND INFECTIOUS DISEASES, INCLUDING FOR THE TREATMENT OF CANCER, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 5-7-2007; IN COMMERCE 5-7-2007.

THE MARK CONSISTS OF THE WORD POM WITH A HEART DESIGN IN PLACE OF THE LETTER O.

SN 78-969,991, FILED 9-8-2006.

JENNY PARK, EXAMINING ATTORNEY

**Int. Cl.: 32**

**Prior U.S. Cls.: 45, 46, and 48**

**United States Patent and Trademark Office**

**Reg. No. 2,944,481**

**Registered Apr. 26, 2005**

**TRADEMARK  
PRINCIPAL REGISTER**

**POM POWER**

POMWONDERFUL LLC (DELAWARE LTD LIAB  
CO)  
11444 WEST OLYMPIC BOULEVARD  
10TH FLOOR  
LOS ANGELES, CA 90064

FOR: FRUIT SMOOTHIES, IN CLASS 32 (U.S. CLS.  
45, 46 AND 48).

FIRST USE 2-10-2003; IN COMMERCE 5-3-2003.

OWNER OF U.S. REG. NOS. 2,637,053, 2,644,365,  
AND OTHERS.

SN 76-486,863, FILED 2-3-2003.

TRACY WHITAKER-BOWN, EXAMINING ATTOR-  
NEY

**Int. Cls.: 5 and 29**

**Prior U.S. Cls.: 6, 18, 44, 46, 51, and 52**

**United States Patent and Trademark Office**

**Reg. No. 3,674,405**

**Registered Aug. 25, 2009**

**TRADEMARK  
PRINCIPAL REGISTER**

**POMx**

POMWONDERFUL LLC (DELAWARE LIMITED  
LIABILITY COMPANY)  
11444 W. OLYMPIC BLVD., 10TH FLOOR  
LOS ANGELES, CA 90064

FOR: NUTRITION BARS FOR USE AS A FUNCTIONAL FOOD DESIGNED TO PROVIDE SPECIFIC HEALTH BENEFITS, NAMELY, NUTRITION BARS FOR USE AS A MEAL REPLACEMENT AND NUTRITION BARS FOR USE AS A DIETARY SUPPLEMENT, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 4-27-2009; IN COMMERCE 4-27-2009.

FOR: NUTRITION BARS FOR USE AS A FUNCTIONAL FOOD DESIGNED TO PROVIDE SPECIFIC

HEALTH BENEFITS, NAMELY, NUTRITIONAL FRUIT AND NUT BASED ENERGY AND SNACK FOOD BARS; FRUIT AND NUT BASED SNACK BARS, IN CLASS 29 (U.S. CL. 46).

FIRST USE 4-27-2009; IN COMMERCE 4-27-2009.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 77-611,932, FILED 11-11-2008.

JANICE KIM, EXAMINING ATTORNEY

**Int. Cls.: 1, 5, 30, and 32**

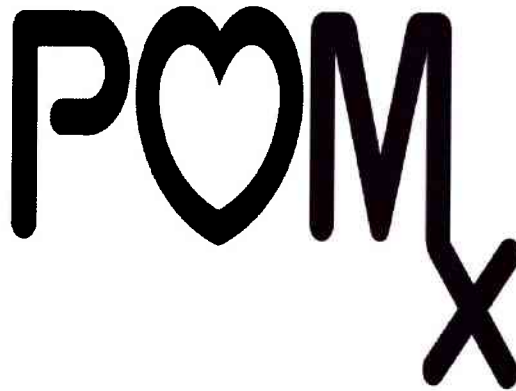
**Prior U.S. Cls.: 1, 5, 6, 10, 18, 26, 44, 45, 46, 48, 51, and 52**

**United States Patent and Trademark Office**

**Reg. No. 3,562,517**

**Registered Jan. 13, 2009**

**TRADEMARK  
PRINCIPAL REGISTER**



**POMWONDERFUL LLC (DELAWARE LIMITED LIABILITY COMPANY)**

**11444 W. OLYMPIC BLVD., 10TH FLOOR  
LOS ANGELES, CA 90064**

**FOR: BOTANICAL EXTRACTS, INCLUDING POMEGRANATE EXTRACTS, FOR USE IN THE PREPARATION OF PHARMACEUTICAL PRODUCTS AND PREPARATIONS; BOTANICAL EXTRACTS, INCLUDING POMEGRANATE EXTRACTS, FOR USE IN THE PREPARATION OF COSMETIC AND SKIN CARE PRODUCTS, IN CLASS 1 (U.S. CLS. 1, 5, 6, 10, 26 AND 46).**

**FIRST USE 5-7-2007; IN COMMERCE 5-7-2007.**

**FOR: FOOD, DIETARY AND NUTRITIONAL SUPPLEMENTS, INCLUDING ANTIOXIDANT SUPPLEMENTS AND SUPPLEMENTS DERIVED FROM AND CONTAINING POMEGRANATE EXTRACTS AND PLANT EXTRACTS, INCLUDING POWDERS, LIQUIDS, CAPSULES, AND PILLS; NUTRACEUTICALS FOR USE AS A DIETARY SUPPLEMENT, INCLUDING POWDERS, LIQUIDS, CAPSULES, AND PILLS; NUTRITIONAL ADDITIVES FOR USE IN FOODS, INCLUDING ANTIOXIDANT ADDITIVES AND ADDITIVES DERIVED FROM AND CONTAINING POMEGRANATE EXTRACTS AND PLANT EXTRACTS, INCLUDING POWDERS, LIQUIDS, CAPSULES, AND PILLS; NUTRITIONALLY FORTIFIED BEVERAGES; ANTI-CANCER PREPARATIONS; PHARMACEUTICAL PRODUCTS AND PREPARATIONS, INCLUDING PREPARATIONS DERIVED FROM AND CONTAINING PO-**

**MEGRANATE EXTRACTS AND PLANT EXTRACTS, FOR THE TREATMENT OF VIRAL AND INFECTIOUS DISEASES, INCLUDING FOR THE TREATMENT OF CANCER; DRUG DELIVERY AGENTS CONSISTING OF COMPOUNDS THAT FACILITATE DELIVERY OF PHARMACEUTICALS; NUTRITIONALLY ENHANCED WATER; VITAMIN ENHANCED WATER, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).**

**FIRST USE 5-7-2007; IN COMMERCE 5-7-2007.**

**FOR: POMEGRANATE EXTRACTS FOR USE AS AN INGREDIENT IN FOOD PRODUCTS, IN CLASS 30 (U.S. CL. 46).**

**FIRST USE 5-7-2007; IN COMMERCE 5-7-2007.**

**FOR: NON-ALCOHOLIC FRUIT EXTRACTS USED IN THE PREPARATION OF BEVERAGES; POMEGRANATE EXTRACTS FOR USE AS AN INGREDIENT IN BEVERAGES, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).**

**FIRST USE 3-6-2006; IN COMMERCE 3-6-2006.**

**OWNER OF U.S. REG. NOS. 2,637,053, 2,960,193, AND OTHERS.**

**THE MARK CONSISTS OF THE WORD "POMX", WITH A HEART DESIGN IN PLACE OF THE LETTER "O" IN THE WORD "POM" AND WITH A SUBSCRIPT LETTER "X" CONNECTED TO THE LETTER "M" IN THE WORD "POM".**

SN 78-664,836, FILED 7-6-2005.

PAUL E. FAHRENKOPF, EXAMINING ATTORNEY



# United States of America

United States Patent and Trademark Office

POM<sub>x</sub>

**Reg. No. 3,791,124**

**Registered May 18, 2010**

**Int. Cls.: 5 and 29**

**TRADEMARK**

**PRINCIPAL REGISTER**

POMWONDERFUL LLC (DELAWARE LIMITED LIABILITY COMPANY)  
11444 W. OLYMPIC BLVD., 10TH FLOOR  
LOS ANGELES, CA 90064

FOR: NUTRITION BARS FOR USE AS A FUNCTIONAL FOOD DESIGNED TO PROVIDE SPECIFIC HEALTH BENEFITS, NAMELY, NUTRITION BARS FOR USE AS A MEAL REPLACEMENT AND NUTRITION BARS FOR USE AS A DIETARY SUPPLEMENT, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 4-27-2009; IN COMMERCE 4-27-2009.

FOR: NUTRITION BARS FOR USE AS A FUNCTIONAL FOOD DESIGNED TO PROVIDE SPECIFIC HEALTH BENEFITS, NAMELY, NUTRITIONAL FRUIT AND NUT BASED ENERGY AND SNACK FOOD BARS; FRUIT AND NUT BASED SNACK BARS, IN CLASS 29 (U.S. CL. 46).

FIRST USE 4-27-2009; IN COMMERCE 4-27-2009.

OWNER OF U.S. REG. NOS. 3,047,447, 3,562,517, AND OTHERS.

THE MARK CONSISTS OF THE WORD "POMX", WITH A HEART DESIGN IN PLACE OF THE LETTER "O" IN THE WORD "POM" AND WITH A SUBSCRIPT LETTER "X" CONNECTED TO THE LETTER "M" IN THE WORD "POM".

SN 77-674,156, FILED 2-19-2009.

TOBY BULLOFF, EXAMINING ATTORNEY



*David S. Kybas*

Director of the United States Patent and Trademark Office

**Int. Cl.: 5**

**Prior U.S. Cls.: 6, 18, 44, 46, 51, and 52**

**United States Patent and Trademark Office**

**Reg. No. 3,667,882**

**Registered Aug. 11, 2009**

**TRADEMARK  
PRINCIPAL REGISTER**

**POM<sub>x</sub> SHOTS**

POMWONDERFUL LLC (DELAWARE LIMITED  
LIABILITY COMPANY)  
11444 W. OLYMPIC BLVD., 10TH FLOOR  
LOS ANGELES, CA 90064

FOR: NUTRACEUTICALS, NAMELY, NUTRA-  
CEUTICALS BEVERAGES FOR USE AS A DIETARY  
SUPPLEMENT; NUTRITIONALLY FORTIFIED  
BEVERAGES; NUTRITIONALLY FORTIFIED WA-  
TER; VITAMIN ENRICHED WATER, IN CLASS 5  
(U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 4-27-2009; IN COMMERCE 4-27-2009.

THE MARK CONSISTS OF STANDARD CHAR-  
ACTERS WITHOUT CLAIM TO ANY PARTICULAR  
FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 2,637,053 AND  
2,960,193.

SN 78-780,508, FILED 12-23-2005.

GEOFFREY FOSDICK, EXAMINING ATTORNEY

**Int. Cls.: 30 and 32**

**Prior U.S. Cls.: 45, 46 and 48**

**United States Patent and Trademark Office**

**Reg. No. 3,208,934**

**Registered Feb. 13, 2007**

**TRADEMARK  
PRINCIPAL REGISTER**

**POWERED BY POM<sub>x</sub>**

POMWONDERFUL LLC (DELAWARE LTD LIAB  
CO)  
11444 W. OLYMPIC BLVD., 10TH FLOOR  
LOS ANGELES, CA 90064

FOR: TEA; PREPARED READY-TO-DRINK TEA;  
TEA-BASED PREPARATION FOR MAKING BEV-  
ERAGES; ICED TEA; TEA-BASED BEVERAGES  
WITH FRUIT FLAVORING; FRUIT TEA AND BEV-  
ERAGES MADE OF TEA, IN CLASS 30 (U.S. CL. 46).

FIRST USE 3-31-2006; IN COMMERCE 3-31-2006.

FOR: NON-ALCOHOLIC FRUIT EXTRACTS  
USED IN THE PREPARATION OF BEVERAGES;  
PREPARATIONS FOR MAKING FRUIT DRINKS;  
FRUIT FLAVORED BEVERAGES; NON-ALCOHOL-  
IC BEVERAGES CONTAINING FRUIT JUICES;  
SMOOTHIES; BOTTLED DRINKING WATER;

NON-ALCOHOLIC BEVERAGES WITH TEA FLA-  
VOR; LOW CALORIE FRUIT FLAVORED BEVERA-  
GES; LOW CALORIE FRUIT JUICE DRINKS;  
SPORTS DRINKS; ENERGY DRINKS; LOW CAL-  
ORIE NON-ALCOHOLIC BEVERAGES WITH TEA  
FLAVOR, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

FIRST USE 3-31-2006; IN COMMERCE 3-31-2006.

THE MARK CONSISTS OF STANDARD CHAR-  
ACTERS WITHOUT CLAIM TO ANY PARTICULAR  
FONT, STYLE, SIZE, OR COLOR.

SER. NO. 78-867,070, FILED 4-21-2006.

BARBARA A. LOUGHRAN, EXAMINING ATTOR-  
NEY

**Int. Cls.: 31 and 32**

**Prior U.S. Cls.: 1, 45, 46, and 48**

**United States Patent and Trademark Office**

**Reg. No. 3,436,526**

**Registered May 27, 2008**

**TRADEMARK  
PRINCIPAL REGISTER**

**Pomegranate**

POMWONDERFUL LLC (DELAWARE LTD LIAB  
CO)  
11444 WEST OLYMPIC BOULEVARD  
10TH FLOOR  
LOS ANGELES, CA 90064

FOR: FRESH FRUITS, IN CLASS 31 (U.S. CLS. 1  
AND 46).

FIRST USE 10-0-2002; IN COMMERCE 10-0-2002.

FOR: FRUIT JUICES AND FRUIT JUICE CON-  
CENTRATES, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

FIRST USE 11-0-2003; IN COMMERCE 11-0-2003.

NO CLAIM IS MADE TO THE EXCLUSIVE  
RIGHT TO USE "POMEGRANATE", APART FROM  
THE MARK AS SHOWN.

THE MARK CONTAINS A HEART DESIGN IN  
PLACE OF THE LETTER "O" IN THE WORD  
"POMEGRANATE".

SN 76-556,753, FILED 10-22-2003.

HOWARD B. LEVINE, EXAMINING ATTORNEY

**Int. Cls.: 1, 5, 30, and 32**

**Prior U.S. Cls.: 1, 5, 6, 10, 18, 26, 44, 45, 46, 48, 51, and 52**

**United States Patent and Trademark Office**

**Reg. No. 3,562,516**

**Registered Jan. 13, 2009**

**TRADEMARK  
PRINCIPAL REGISTER**

**POMx**

POMWONDERFUL LLC (DELAWARE LIMITED LIABILITY COMPANY)  
11444 W. OLYMPIC BLVD., 10TH FLOOR  
LOS ANGELES, CA 90064

FOR: BOTANICAL EXTRACTS, INCLUDING POMEGRANATE EXTRACTS, FOR USE IN THE PREPARATION OF PHARMACEUTICAL PRODUCTS AND PREPARATIONS; BOTANICAL EXTRACTS, INCLUDING POMEGRANATE EXTRACTS, FOR USE IN THE PREPARATION OF COSMETIC AND SKIN CARE PRODUCTS, IN CLASS 1 (U.S. CLS. 1, 5, 6, 10, 26 AND 46).

FIRST USE 5-7-2007; IN COMMERCE 5-7-2007.

FOR: DIETARY AND NUTRITIONAL SUPPLEMENTS, INCLUDING ANTIOXIDANT SUPPLEMENTS AND SUPPLEMENTS DERIVED FROM AND CONTAINING POMEGRANATE EXTRACTS AND PLANT EXTRACTS, INCLUDING POWDERS, LIQUIDS, CAPSULES, AND PILLS; NUTRACEUTICALS FOR USE AS A DIETARY SUPPLEMENT, INCLUDING POWDERS, LIQUIDS, CAPSULES, AND PILLS; NUTRITIONAL ADDITIVES FOR USE IN FOODS, INCLUDING ANTIOXIDANT ADDITIVES AND ADDITIVES DERIVED FROM AND CONTAINING POMEGRANATE EXTRACTS AND PLANT EXTRACTS, INCLUDING POWDERS, LIQUIDS, CAPSULES, AND PILLS; ANTI-CANCER PREPARATIONS; PHARMACEUTICAL PRODUCTS AND PREPARATIONS, INCLUDING PREPARATIONS DERIVED FROM AND CONTAINING POMEGRANATE EXTRACTS AND PLANT

EXTRACTS, FOR THE TREATMENT OF VIRAL AND INFECTIOUS DISEASES, INCLUDING FOR THE TREATMENT OF CANCER; NUTRITIONALLY FORTIFIED BEVERAGES, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 5-7-2007; IN COMMERCE 5-7-2007.

FOR: POMEGRANATE EXTRACTS FOR USE AS AN INGREDIENT IN FOOD PRODUCTS, IN CLASS 30 (U.S. CL. 46).

FIRST USE 5-7-2007; IN COMMERCE 5-7-2007.

FOR: NON-ALCOHOLIC FRUIT EXTRACTS USED IN THE PREPARATION OF BEVERAGES; POMEGRANATE EXTRACTS FOR USE AS AN INGREDIENT IN BEVERAGES, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

FIRST USE 3-6-2006; IN COMMERCE 3-6-2006.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 2,637,053, 2,960,193, AND OTHERS.

SN 78-664,816, FILED 7-6-2005.

PAUL E. FAHRENKOPF, EXAMINING ATTORNEY

**McGehee, Julie**

---

**From:** Allayee, Azadeh  
**Sent:** Friday, October 11, 2013 10:04 AM  
**To:** McGehee, Julie  
**Cc:** Pecht, JP  
**Subject:** Expert research for Teleflora class action - Paul Farris  
**Attachments:** Farris%20VITA%202013.pdf

Julie, can you do an expert challenge search today on this expert witness (as well as a google search) to see if he's ever been disqualified and what cases he's testified in?

# **Exhibit C**



















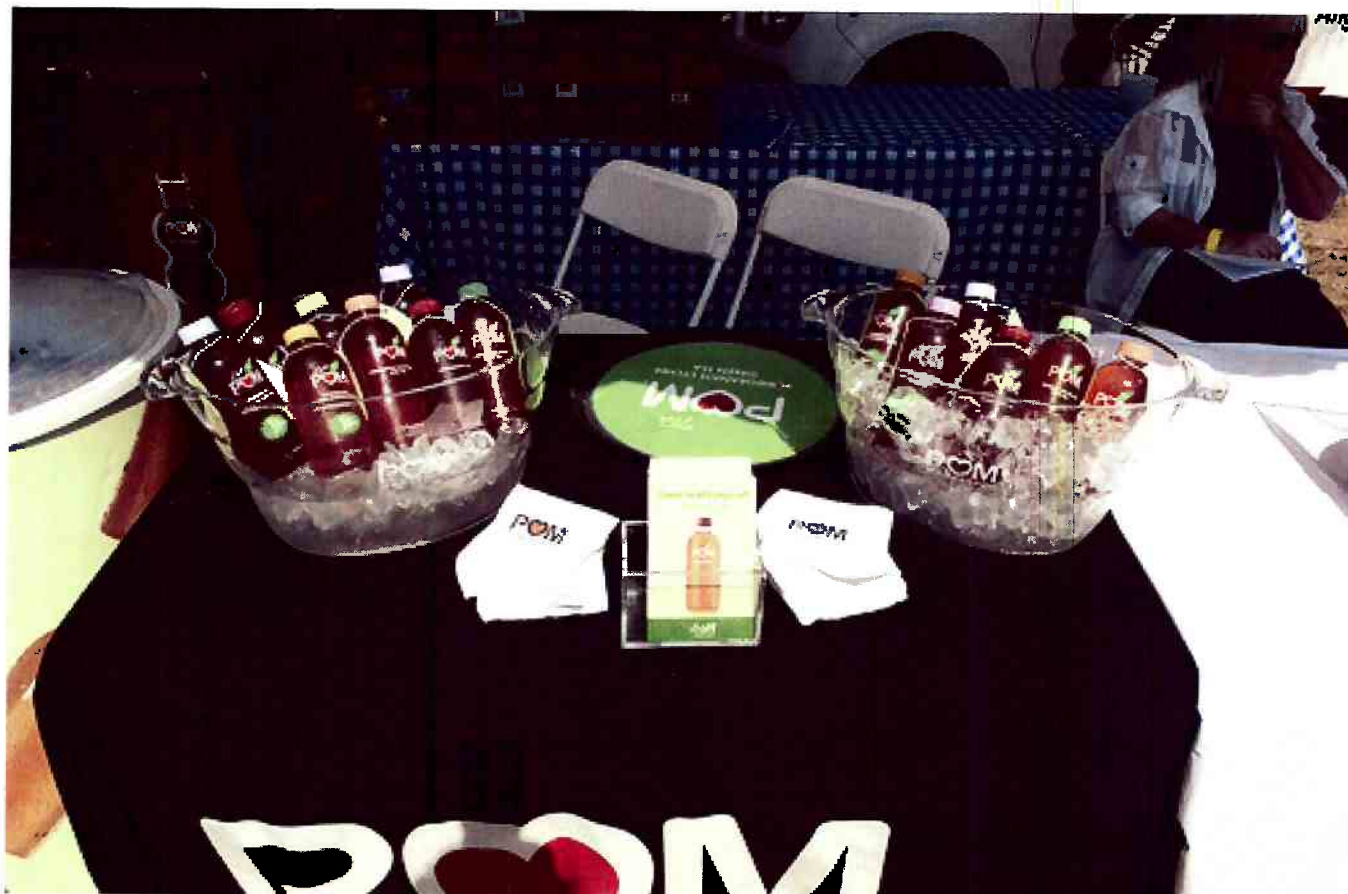
















# **Exhibit D**





[Find a DQ](#)  
Available As

- Small
- Medium
- Large

Team Berry or Team Pomegranate? It was a tough decision between the innocently sweet blackberry, strawberry and raspberry and the dramatically dark and mysterious pomegranate. So we threw low fat yogurt into the mix to smooth things over. Now they're one big happy family.

\*Pomegranate flavored

This incredibly refreshing and invigorating drink is hand blended with real fruit and low fat yogurt, and you can add fresh banana or a protein boost to it. DO NOT, we repeat, DO NOT settle for anything less. You're already a fan? Fantastic.

city/st or zip

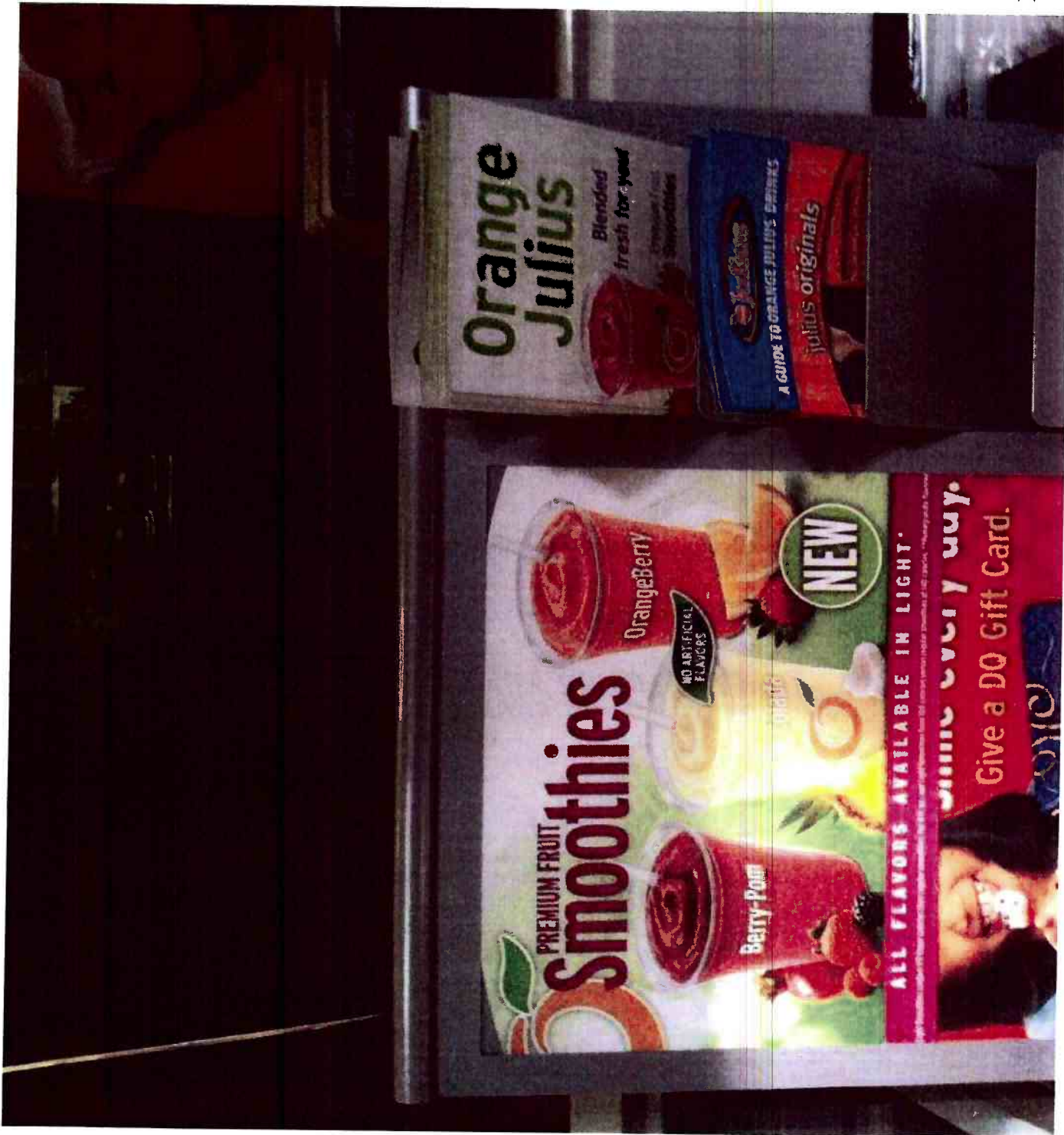
[Nutrition Facts](#) [Nutrition Facts](#)  
[Prev](#)

- [Berry-Pom Smoothie - Small](#)





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Available on the  
App Store

Download Now SmartSourceXpress for iPhone - get coupons from your phone!

Download Now SmartSourceXpress for iPhone - get coupons from your phone!

SmartSource

Orange Julius

PREMIUM

## FRUIT SMOOTHIES

Now at



Real fruit, low fat yogurt and no artificial flavors.



8 FLAVORS BLENDED FRESH

**FREE** **Small Premium Fruit Smoothie**  
with any purchase at regular price



Limit one per coupon and one coupon per customer. This coupon not redeemable with any other offer and redeemable only on items selling at regular price. This coupon has no cash value. Coupon must be presented at time of purchase. All trademarks owned or licensed by Am. D.Q. Corp. © 2013. Void if altered, copied, sold, exchanged, or where restricted by law. Plus tax if applicable. Valid only at participating locations. Valid thru 5/31/13. PLU 25136

**FREE** **Premium Fruit Smoothie or Julius® Original**  
with purchase of a Premium Fruit Smoothie or Julius® Original of equal or greater value



Limit one per coupon and one coupon per customer. This coupon not redeemable with any other offer and redeemable only on items selling at regular price. This coupon has no cash value. Coupon must be presented at time of purchase. All trademarks owned or licensed by Am. D.Q. Corp. © 2013. Void if altered, copied, sold, exchanged, or where restricted by law. Plus tax if applicable. Valid only at participating locations. Valid thru 5/31/13. PLU 25154

**FREE** **Blizzard® Treat**  
12, 16, or 21 oz. size  
with purchase of a Blizzard® Treat of equal or greater value



Limit one per coupon and one coupon per customer. This coupon not redeemable with any other offer and redeemable only on items selling at regular price. This coupon has no cash value. Coupon must be presented at time of purchase. All trademarks owned or licensed by Am. D.Q. Corp. © 2013. Void if altered, copied, sold, exchanged, or where restricted by law. Plus tax if applicable. Valid only at participating locations. Valid thru 5/31/13. PLU 25028

**\$3 \$4 \$5**   
**OFF OFF OFF**  
8" Round 10" Round Sheet  
**DQ® Cakes**



Limit one per coupon and one coupon per customer. This coupon not redeemable with any other offer and redeemable only on items selling at regular price. This coupon has no cash value. Coupon must be presented at time of purchase. All trademarks owned or licensed by Am. D.Q. Corp. © 2013. Void if altered, copied, sold, exchanged, or where restricted by law. Plus tax if applicable. Valid only at participating locations. Valid thru 5/31/13. 8725162 10725195 Sheet25432

Berry-Pom\* Premium Fruit Smoothie - Drinks Menu - Dairy Queen



FOOD TREATS DRINKS CAKES FULL MENU PROMOS

FIND A DQ



## Berry-Pom\* Premium Fruit Smoothie

Available As

- Small
- Medium
- Large

Team Berry or Team Pomegranate? It was a tough decision between the innocently sweet blackberry, strawberry and raspberry and the dramatically dark and mysterious pomegranate. So we threw low fat yogurt into the mix to smooth things over. Now they're one big happy family.

\*Pomegranate flavored

This incredibly refreshing and invigorating drink is hand blended with real fruit and low fat yogurt, and you can add fresh banana or a protein boost to it. DO NOT, we repeat, DO NOT settle for anything less. You're already a fan? Fantastic.

Find a DQ



Nutrition Facts ▼

 like Send

You and 2 others

## You Want More, We Got It

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to District Judge Michael W. Fitzgerald and the assigned  
Magistrate Judge is Jacqueline Chooljian.

The case number on all documents filed with the Court should read as follows:

2:13-cv-07555 MWF-JCx

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge.

Clerk, U. S. District Court

October 11, 2013

Date

By SBOURGEOIS  
Deputy Clerk

---

---

NOTICE TO COUNSEL

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

**Subsequent documents must be filed at the following location:**

☒ Western Division  
312 N. Spring Street, G-8  
Los Angeles, CA 90012

☐ Southern Division  
411 West Fourth St., Ste 1053  
Santa Ana, CA 92701

☐ Eastern Division  
3470 Twelfth Street, Room 134  
Riverside, CA 92501

**Failure to file at the proper location will result in your documents being returned to you.**



AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

CENTRAL District of CALIFORNIA

POM WONDERFUL LLC, a Delaware limited liability  
company

Plaintiff(s)

v.

AMERICAN DAIRY QUEEN CORPORATION, a  
Delaware corporation; ORANGE JULIUS OF  
AMERICA, a Delaware corporation; and DOES 1  
through 10, inclusive

Defendant(s)

Civil Action No.

CV13-7555 MWF-JC,

AMENDED SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

ORANGE JULIUS OF AMERICA  
C T Corporation  
818 W. Seventh St.  
Los Angeles, CA 90017

AMERICAN DAIRY QUEEN CORPORATION  
CT Corporation  
818 W. Seventh St.  
Los Angeles, CA 90017

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: OCT 11 2013

CLERK OF COURT  
U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIFORNIA  
Signature of Clerk or Deputy Clerk  
1184

COPY

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET

I. (a) PLAINTIFFS ( Check box if you are representing yourself ☐ )  
POM WONDERFUL LLC, a Delaware limited liability company

DEFENDANTS ( Check box if you are representing yourself ☐ )  
AMERICAN DAIRY QUEEN CORPORATION, a Delaware corporation; ORANGE JULIUS OF AMERICA, a Delaware corporation; and DOES 1 through 10, inclusive

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)  
Michael M. Vasseghi (SBN 210737); mvasseghi@roll.com  
ROLL LAW GROUP P.C.  
11444 W. Olympic Blvd.  
Los Angeles, CA 90064  
310-966-8400

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1. U.S. Government Plaintiff  
☐ 2. U.S. Government Defendant  
☒ 3. Federal Question (U.S. Government Not a Party)  
☐ 4. Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES-For Diversity Cases Only  
(Place an X in one box for plaintiff and one for defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN (Place an X in one box only.)

- ☒ 1. Original Proceeding  
☐ 2. Removed from State Court  
☐ 3. Remanded from Appellate Court  
☐ 4. Reinstated or Reopened  
☐ 5. Transferred from Another District (Specify)  
☐ 6. Multi-District Litigation

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check "Yes" only if demanded in complaint.)

CLASS ACTION under F.R.Cv.P. 23: ☐ Yes ☒ No ☒ MONEY DEMANDED IN COMPLAINT: \$ to be determined at trial

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)  
Federal Trademark Infringement; Violation of the Lanham Act Sec. 43(a); Unfair Competition under California Business & Professions Code Sec. 1722 et seq.; California Common Law Unfair Competition

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/Etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org. <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV  <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 896 Arbitration  <input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.) <input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise  <b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property  <b>TORTS</b> <b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions  <b>TORTS</b> <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability  <b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 American with Disabilities-Employment <input type="checkbox"/> 446 American with Disabilities-Other <input type="checkbox"/> 448 Education	<b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee Conditions of Confinement  <b>FORFEITURE/PENALTY</b> <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other  <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Ret. Inc. Security Act	<input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405 (g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405 (g))  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

FOR OFFICE USE ONLY: Case Number: 0V13-7555

AFTER COMPLETING PAGE 1 OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED ON PAGE 2.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA**  
**CIVIL COVER SHEET**

**VIII(a). IDENTICAL CASES:** Has this action been previously filed in this court and dismissed, remanded or closed? ☒ NO ☐ YES

If yes, list case number(s): \_\_\_\_\_

**VIII(b). RELATED CASES:** Have any cases been previously filed in this court that are related to the present case? ☒ NO ☐ YES

If yes, list case number(s): \_\_\_\_\_

**Civil cases are deemed related if a previously filed case and the present case:**

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or  
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or  
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or  
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

**IX. VENUE:** (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.

☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

<b>County in this District: *</b>	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.

☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

<b>County in this District: *</b>	California County outside of this District; State, if other than California; or Foreign Country
	New Castle, Delaware

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.  
**NOTE: In land condemnation cases, use the location of the tract of land involved.**

<b>County in this District: *</b>	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

\* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

**Note:** In land condemnation cases, use the location of the tract of land involved

**X. SIGNATURE OF ATTORNEY (OR SELF-REPRESENTED LITIGANT):** Michael M. Vasseghi DATE: October 11, 2013

**Notice to Counsel/Parties:** The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet)

**Key to Statistical codes relating to Social Security Cases:**

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))